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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fifty-first session
Items 3 and 9 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement submitted by the International Movement Against All Forms of Discrimination and Racism, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 June 1999]

Discrimination and the right to a fair trial

1. Acknowledging with appreciation that the Sub-Commission on Prevention of Discrimination and Protection of Minorities had considered the question of fair trials till 1996, the International Movement Against All Forms of Discrimination and Racism (IMADR) wishes to provide information on a concrete case of an unfair trial involving a defendant who belongs to a minority group in Japan, in the hope that the Sub-Commission will reopen its consideration of the issue of fair trials.

2. In 1963 a high-school girl was kidnapped and killed in Sayama City, Saitama Prefecture, Japan. This murder case, which is called the "Sayama Case" after the place of the killing, led to the arrest of Mr. Kazuo Ishikawa, who belongs to the Buraku people or Burakumin, a group who still face serious discrimination. Mr. Ishikawa was first arrested on a minor charge by the police who had been hunting for a criminal in a matter involving prejudice against Burakumin, allegedly forced to falsely confess to murder in the Sayama Case after a long interrogation and examination in a substitute prison (Daiyo Kangoku), and convicted. For over 36 years, Mr. Ishikawa has called for a retrial of the case, claiming his innocence.

3. Nearly 13 years have passed since Mr. Ishikawa's defence counsel filed a plea for retrial with the Tokyo District High Court and demanded the interrogation of particularly important unsworn witnesses and legal advisers and a fact-finding investigation. In the Sayama Case, an examination of the evidence has not been done for almost 25 years. Mr. Ishikawa's defence counsel has also demanded the full disclosure of all evidence possessed by the prosecutors. Despite the continuous negotiations with the prosecutors, however, the evidence has yet to be disclosed, though the Prosecutors Office has admitted to the possession of a large volume of evidential materials and items. Disclosure of even the list of all evidence, which the defence counsel demands as a first step, has not yet been made.

4. The prosecutors argue that some of the evidence relates to the privacy of the persons involved, and that making it public would put at risk citizens' cooperation with police investigations in the future. However, we believe that after 36 years, disclosure of such items cannot be considered an obstacle to police investigation and, besides, they would not be used outside the court. The principle of the retrial system, "giving relief to the innocent", should be respected. Moreover, as the prosecutors have an obligation to investigate the circumstances of the crime, they should disclose all evidence possessed by them on their own initiative. Without disclosure of the list of all the evidence, the defence counsel is deprived of any effective means of knowing their contents and to identify the items to be disclosed. It is unfair and an injustice.

5. The Human Rights Committee, having examined the fourth periodic report of Japan (CCPR/C/115/Add.3 and Corr.1) in October 1998, recommended, among other things, that Japan should ensure "that its law and practice enable the defence to have access to all relevant material in order that the right of defence is not hampered" (CCPR/C/79/Add.102, para. 26). It is noteworthy that during the consideration of Japan's report, a question was raised by a member

of the Committee as to how Japan's legal system guarantees access to evidence unknown to defence lawyers, and the Sayama Case was specifically mentioned as a case in point.

6. Responding to the recommendation of the Human Rights Committee, several Japanese legal experts and law practitioners are now discussing how the guarantee of disclosure of evidence should be promoted. In Parliament, government leaders are being questioned in this regard. To guarantee the disclosure of evidence for the defence is indeed one of the major issues in the current legal reform of criminal proceedings in Japan.

7. Encouraged by the Committee's recommendation, the defence counsel for Mr. Ishikawa has filed an appeal with the Tokyo High Prosecutors Office, in which it particularly demands the disclosure of evidence that may not be deemed as infringing on anyone's privacy. In Japan, submission of new evidence is the prerequisite for a retrial.

8. The Japanese Government, as a State party to the International Covenant on Civil and Political Rights, should be urged to take immediate action to ensure that Mr. Ishikawa is guaranteed a fair trial and that all evidence is disclosed, in compliance with article 14.3 (b) of the Covenant which stipulates that everyone charged with a criminal offence shall be entitled to have adequate time and facilities for the preparation of his/her defence.

9. IMADR hopes that the Sub-Commission will once again consider the question of fair trials and examine, in particular, unfair trial cases involving minority groups like the "Sayama Case", which are grounded in deep-rooted discrimination and prejudice.